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ABSTRACT

This paper traces the historical development of New York State Small City School District (SCSD) school budget voting policy. State policymakers are currently debating whether to change from representative to referendum school budget voting in SCSDs. Following a historical analysis of the current debate, the argument is made that there no longer seems to be a solid rationale for continuing a separate budget voting policy for independent SCSDs and other independent noncity school districts. The recommendation is made that state policy on school budget voting, whether representative or referendum, should be the same in all independent school districts. (Contains 17 references.) (LMI)

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AN HISTORICAL CLARIFICATION OF THE NEW YORK STATE SMALL CITY SCHOOL DISTRICT BUDGET VOTING POLICY DEBATE

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AN HISTORICAL CLARIFICATION OF THE NEW YORK STATE SMALL CITY SCHOOL DISTRICT BUDGET VOTING POLICY DEBATE

ABSTRACT

This paper traces the historical development of New York State Small City School District school budget voting policy. Presently, state policy-makers are debating whether to change from representative to referendum school budget voting in Small City School Districts. After an historical analysis of the current debate, this paper argues that there no longer seems to be a solid rationale for continuing a separate budget voting policy for independent Small City School Districts and other independent non-city school districts. The paper recommends that state policy on school budget voting, whether representative or referendum, should be the same in all independent school districts.

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AN HISTORICAL CLARIFICATION OF THE NEW YORK STATE SMALL CITY SCHOOL DISTRICT BUDGET VOTING POLICY DEBATE

In 1985 the constitutional amendment which had imposed tax limitations on Small City School Districts (SCSDs) in New York State since 1950 was repealed. The 57 SCSDs with populations less than 125,000, while fiscally independent, continue to be governed by separate provisions in Education Law that distinguish them from the 645 other common, union free, and central (non-city) independent school districts. One controversial difference in New York State Education Law is a provision which requires a school budget referendum in independent non-city school districts but not in independent SCSDs. With repeal of the tax limit, a debate began over the question of extending the budget referendum to SCSD residents. Part of the debate has centered around the relevancy of what were considered the historic rationales for a separate budget voting policy for SCSDs: constitutional tax limits and city population size.

City school districts have a unique history in New York State. Concerns over city school district finances led to the imposition of local tax limits in some jurisdictions as early as 1849, and the approval of a state constitutional tax limit for all cities in 1884 (Venter, 1985). The first attempt at solving the "vexing problem of budgetary control" (Mort, 1951a, p70) for city school districts took place in 1917, but it was not until 1950 that legislation was passed outlining a consistent state policy for all SCSDs. Until 1950, state

educational provisions for city schools were found in both Education Law and special Acts of the Legislature. State education policy towards the cities has been largely incremental in nature, with the earliest provisions as the initiating framework for later legislation.

This paper reviews the historical foundations of school budget voting in New York State. First, it demonstrates that the representative and referendum distinction found between small city and non-city school districts is derived largely from historical circumstance rather than an explicit decision by state lawmakers that representative voting would be "better" for SCSDs than direct referendum voting. Second, the designation of city no longer connotes population size. The legal classification of "small city" holds little practical relevance today, because many towns and villages are as large as the small cities. This suggests that the state policy on school budget voting, whether representative or referendum, should be the same in all independent school districts.

The paper begins with an overview of New York State school district budget provisions. It next outlines the legislative history of the SCSD, up to the repeal of the constitutional tax limit in 1985. The discussion then turns to a legal case brought in 1989, which argued that a continuation of the SCSD and non-city district budget voting distinction, despite repeal of the tax limit, was a violation

of the equal protection clause in the United States and New York State constitutions. With the New York Attorney General's comments on the rationale for a continuation of a separate SCSD budget voting policy as a foundation, the paper next discusses the basis for the legal classification of a city in New York State. After arguing for a uniform budget voting policy for independent non-city and SCSDs, the paper presents a summary of SCSD legislation.

NEW YORK STATE EDUCATIONAL BUDGET PROVISIONS

The SCSD budget voting issue should be viewed in the context of educational provisions applying to the other 650 school districts in the state. Due to historical circumstance, New York State education law contains many exceptions. New York State education law on budget voting is distinct for the five largest city districts, the 57 SCSDs, and the 645 central, common, and union free school districts (i.e., non-city districts).

Presently, the "Big Five" city districts (New York, Buffalo, Rochester, Syracuse, and Yonkers) are fiscally dependent on city governments. In these five districts, educational appropriations must pass through the municipal budgetary process (Stavisky, 1985). As mentioned, for the 57 SCSDs, an elected school board has sole responsibility for adopting the annual school budget. In the remaining central,

common, and union free school districts, the school board develops the budget and presents it to voters in the form of a referendum.

THE REFERENDUM SCHOOL BUDGET VOTE TRADITION

In New York State, there is a long tradition of school budget voting in non-city school districts. A 1795 New York State statute (the first Common School Act, which expired after five years) authorized citizens direct control of education through the town meeting:

> At town meetings the people voted revenues for support of schools and selected teachers by popular vote (New York State Legislative Commission on Expenditure Review {LCER}, 1978, p4).

The 1812 Common School Act also called for the town meeting to "direct by their vote" a levy for the "support of common schools" (Chapter 242, Laws of 1812, Section V). The purpose of the Common School Act was to create and fund a system of Common Schools within walking distance of every child in New York State. Funding was funneled primarily through county governments to town governments. Special provisions in the Act were made for the city governments already in existence, giving the City Council control over monies from the Common School Fund. The provision for a direct budget vote in the

Common School Act was carried through in a 1853 statute that created union free school districts (LCER, 1978, p4).

DEVELOPMENT OF SEPARATE PROVISIONS FOR SCSDs

Unlike rural school districts, "city school districts traditionally have been exceptions to this pattern of popular vote on the budget" (LCER, 1978, p4). Historically, authority over city school district finances was granted by the city charter, or by a special act of the state Legislature (LCER, 1978, p5).

The tradition of separate provisions for city schools was codified with the passage of the original Common School Acts in 1795 and 1812. These laws extended education to rural towns, and outlined separate provisions for the existing cities:

> As cities were created over the ensuing century, the education systems of the communities concerned were taken out of the general provisions applicable to non-city school districts and these systems were left largely to regulation by the city charter or separate statutes (New York State Office of the Governor, 1950, p27).

The special provisions on city - school relationships resulted in a lack of uniformity in city school district governance and financing. Several city districts, including

the largest six in the state, depended on their city governments for school revenues, while other city school districts were given their own taxing authority. In some cities, school boards were appointed by the City Council; in others they were elected. District boundaries could be smaller, larger, or equal to city boundaries, depending on the city. In addition, some districts were subject to constitutional property tax limits (first passed in 1884), while others were not (Burke, 1978, p8). By 1917, some educators felt the separate city education provisions had become too unwieldy, leaving governance and financing provisions susceptible to city political party considerations (New York State Office of the Governor, 1950, p15).

THE 1917 ATTEMPT AT CONSOLIDATING SCSD LEGISLATION

Chapter 786 of the Laws of 1917, "an act to amend the education law by providing for a board of education in the several cities of the state," was the first attempt at consolidating the varying statutes pertaining to city school districts. It repealed 62 laws and some provisions in 89 others (New York State Office of the Comptroller, 1949, p23). These statutes dated back as far as 1829 (Chapter 786, Laws of 1917, Sec. 6, Laws Repealed). The legislation was developed by Dr. Thomas E. Finegan, a deputy commissioner of the New

York Department of Education. The first "city school law" was meant to:

- confer broad power upon boards of education in the several cities of the state so to operate and manage their school as the residents of the city may desire and to adjust the school organization to the necessity of new and changing conditions from year to year;
- give greater powers to localities than they ever before exercised and eliminate many of the useless, mandatory and restrictive provisions contained in the old, complicated and obsolete statutes and fix responsibility upon those who manage schools (New York State Office of the Comptroller, 1949, p23-24).

According to the Comptroller, political compromises left many of the previous provisions intact (New York State Office of the Governor, 1950, p15).

THE PASSAGE OF ARTICLE 51 FOR SCSDs IN 1950

Despite its attempt at consolidation, the "city school law" of 1917 did little to simplify a complex fiscal and legal situation. In 1949, the 56 small cities still had a number of statutory variations, including:

- Board members were elected in 34 districts, appointed in 21, and half appointed half elected in one other;
- 30 school boards had absolute control over the school budget, the rest were subject to some city restrictions; including, 9 school districts where the city authorities had the power to reduce the budget;
- In 27 cities the tax was included in the city tax levy; in 29 the school tax was levied separately (New York State Office of the Comptroller, 1949, p24).

Following a 1949 constitutional amendment that set a separate tax limit for SCSDs (Article 8, Section 10), legislation was passed in 1950 making SCSDs independent of city governments. That legislation (Chapter 762 of the Laws of 1950) created Article 51 of Education Law for cities with fewer than 125,000 people. Fiscal independence for SCSDs meant that local school boards had the sole authority to set budgets and raise necessary taxes. Proponents of the legislation believed school district independence would lead to greater accountability because elected school board members were given direct responsibility for school expenditures.

Article 51 came after a two-year study by a broad-based committee of government officials and educational

constituents, led by the State Comptroller. This committee produced two reports: one calling for separate constitutional tax limits for SCSDs; the other focusing on fiscal separation of city governments and school districts. As the comments below demonstrate, because the focus of Chapter 762 was on separating school and city finances, it does not appear that much thought was given to a budget referendum for these districts.

COMMENT ON THE ARTICLE 51 BILL

The Comptroller's interpretation of the budget provisions in Article 51 was as follows:

> The annual budget will be prepared and adopted by the board of education and will not be subject to approval by municipal authorities; school taxes will be levied by the board of education; ... (New York State Office of the Governor, 1950, p16).

The State Department of Education's Memorandum on the Bill included a discussion of the history and focus of the Bill. It pointed out that:

> the thinking of these earlier years failed to distinguish between the city and the city school district; failed to recognize the fact that education is a state function ... (New York State Office of the Governor, 1950, p27).

A memo sent to the Governor's Office by the Poughkeepsie Board of Education hinted at the possibility of local protest:

> any local protest is based on lack of information and understanding of the safeguards to the taxpayers provided by the eighth amendment and the fiscal independence bill (New York State Office of the Governor, 1950, p9).

The school board's opinion was that the constitutional tax limit, combined with the provisions for direct accountability and input on the school budget, would provide ample safeguards against arbitrary taxing by school boards.

Mort (1951a, 1951b) confirms that the referendum was not considered an option when the 1950 legislation was deliberated:

> It is possible that in our concern over fiscal dependence we may have overlooked a more fundamental question - direct voter fiscal control vs. delegated fiscal control (Mort, 1951b, p34).

When the tax limits were removed in 1985, the question of "direct voter fiscal control vs. delegated fiscal control" became the focus of the debate over which decision-making process SCSDs would use.

THE CONSTITUTIONAL TAX LIMIT FOR SCSDs AND FUTURE PROBLEMS

The new constitutional tax limit for SCSDs, which had passed in 1949, added Subdivision (e) to Section 10 of Article

VIII. The limit was set at 1.25 percent of the most recent five-year average full valuation of taxable real property. Districts were allowed to increase the tax limit to 2 percent if 60 percent of the voters approved additions of .25 percent annual increments (New York State Consolidated Law Service, 1990).

In the late 1960s and early 1970s, when many SCSDs began to approach their constitutional tax limits, the state legislature applied several remedies to assure revenues were available for state-mandated educational programs. One law, for example, allowed school districts to exclude social security and retirement contributions from their tax limit calculations. This law was struck down with a 1974 court ruling (the "Hurd" decision), and similar legislation was struck down in a 1978 court opinion (New York State Senate Research Service, 1988a, p5).

In 1978, the state offered interest-free loans to help SCSDs that were spending at their tax limits, but only eight of 57 districts applied (20 million dollars was loaned). The following year, the state offered direct grants to selected SCSDs. These grants came to be known as Hurd Aid (New York State Assembly Ways and Means Committee, 1987, p1). The Hurd Aid program grew: 22 districts received nearly 10 million dollars in 1979, while 44 districts received more than 95

million dollars in 1986 (New York State Assembly Ways and Means Committee, 1987, p2).

Originally, Hurd Aid was considered as a temporary solution to SCSD fiscal problems. By the mid-1980s it became apparent that the only permanent solution was to repeal the constitutional tax limit for SCSDs. Through a statewide referendum, the tax limit for SCSDs was repealed in 1985 (New York State Assembly Ways and Means Committee, 1987, p1). The Hurd Aid program continued, however, because SCSDs were thought to be "dependent" on the revenues (New York State Senate Research Service, 1988a, p1).

The referendum won by a narrow margin, and its passage was due primarily to the nearly two to one plurality of "yes" votes from New York City (Kissinger, 1987, p3). The tally for counties outside New York City was 688,106 to 828,048 against repeal, with the total New York State count 994,490 to 982,430 in favor of repeal (New York State Senate Research Service, 1988b, p16). With the repeal of the tax limit accomplished, the debate over SCSD school budget voting began.

SCSD BUDGET VOTING EQUAL PROTECTION CHALLENGE

A 1989 legal challenge brought by a resident of the Glen Cove SCSD argued that the budget voting distinctions between non-city and SCSDs deprived small city voters of equal protection under the law. The suit argued that the repeal of

the SCSD tax limit in 1985 exposed him "to greater risks of arbitrary and oppressive taxation than residents of other types of school districts" (Boeddener, 1989, p2). The three suits (one federal and two state) were dismissed by the courts, but the New York State Attorney General's "Memorandum of Law in Support of Motion to Dismiss" (Boeddener, 1989) is instructive in terms of the legal underpinnings of the school budget voting process imposed by the New York State Legislature.

The Attorney General's Memorandum argued that the SCSD budget voting statute is rationally related to a legitimate governmental purpose. It argued that "school districts are classified mainly by population" (p8) and "that such a population-based classification scheme is rational" (p9). In supporting the claim of a rational policy, the memorandum suggested that the decision to repeal the tax limit was based on a determination by the Legislature that a tax limit was not necessary:

> It is rational for a state to decide that small city districts and non-city districts, units of government devoted to the single purpose of education, are less likely than cities or villages, which provide varieties of municipal services, to tax oppressively, and to conclude that

> constitutional tax limits for such districts are therefore unnecessary (p9).

The memorandum continues with the reasoning in support of school budget voting in SCSDs:

> Likewise, it is rational to conclude that direct voting on school budgets is more desirable -- or simply more manageable -- in rural or suburban communities than in smaller urban areas (p9).

Based on precedent the brief argued that:

> When a state chooses from among several alternatives that can rationally be said to serve some legitimate public purpose, the courts will not impose a different choice (p10).

As the following discussion will demonstrate, many non-city school districts today are as large or larger than small city districts. This fact contradicts the Attorney General's rationale for a separate budget voting policy for SCSDs. It is true that as a state creation, the Legislature can impose whatever governance structure it deems appropriate. However, legally, the differences should not be arbitrary, but rationally related to some governmental interest. The following discussion questions the Attorney General's claim that budget votes are more manageable or desirable in non-cities because of their smaller population size.

CLASSIFICATION AS A CITY IN NEW YORK STATE

In New York State, the classification of a city is a function of political organization - not population size:

> For an area to become a city in the Empire State, no population or geographic size requirements have to be met. The size of the cities range from about 3,000 to more than 7,000,000. ... All of the 60-plus cities in New York have separate charters granted by the state Legislature. ... All cities do have elected councils, with members from wards or who serve at large (Clements, 1989, p41).
>
> Although popular thinking tends to regard cities as larger and more densely populated units, this is not necessarily true in New York State where many towns and villages are larger than some cities (Fairbanks, 1989, p84).

In 1978, for example, there were seven towns with populations in excess of 125,000 (Frey, 1978, p3), and by 1988, the Town of Hempstead had more than twice the population of the City of Buffalo (The Nelson A. Rockefeller Institute of Government, 1988, p182). In 1980, the 57 SCSDs ranged in population from 7,700 in Mechanicville to 101,700 in Albany (the majority of SCSDs include areas outside the city boundaries). In the same year, there were more than 300 non-city school districts with district populations within the 7,700 to 102,000 range (82

with district populations over 25,000) (The Nelson A. Rockefeller Institute of Government, 1986).

The distinction between cities and other units of local government is that cities receive their charters directly from the State Legislature. A town is a subdivision of the county. Villages are subdivisions of towns, and in New York range from 16 to 40,000 inhabitants:

> Historically, villages were created because clusters of people in otherwise sparsely settled towns wanted to secure fire or police protection or other services (Fairbanks, 1989, p91).

Today, some village and town governments provide a full range of services similar to those provided by city governments.

In terms of school district budget voting, the idea that a city gets its charter directly from the state, and towns and villages do not, might have been important when school funds were first distributed by the state, but has little practical relevance today. Rationales for a separate budget voting policy for SCSDs based on their larger population size, or constitutional tax limits, are no longer relevant. Of course, suggesting that the budget policy be the same for all independent school districts does not answer the question of which policy, representative or referendum voting, should be adopted.

SUMMARY

Although SCSDs are considered fiscally independent today, with the school board having the authority to adopt the school district budget and raise the necessary taxes, this was not always the case. In the 1800s control over city school district finances in most cases was specified in the individual city charters. Funds generally were raised through a city property tax. The school board, which in many cases was appointed by the city government, was dependent on the city for its revenues.

The process differed in common, central, and union-free school districts (non-city districts), which were given their own independent taxing authority. Although cities were to be constrained by a constitutional tax limit (Article 8, Section 10) passed in 1884, non-city school districts had no such limit and were held accountable by an annual district-wide budget vote.

A constitutional amendment set a separate tax limit for SCSDs in 1949. The limit was considered to be an adequate automatic control or cap on SCSD expenditures. Thus, the tax limit was one way in which school boards were prevented from imposing an extraordinary tax burden on district residents.

Legislation was then passed in 1950 that made SCSDs independent of city governments. Fiscal independence was promoted as a way to foster great accountability, because it

put direct spending responsibilities on an elected school board. The new arrangement, which included school board accountability to the voters and property tax limits, was considered a better way to ensure city school district monies were spent wisely.

Some SCSDs began to approach their constitutional tax limits in the late 1960s and early 1970s. To ensure revenues were available for state mandated educational programs, the New York State Legislature offered relief to SCSDs. One relief measure, Hurd Aid, was considered temporary, and it became increasingly apparent that the only permanent solution was to repeal the constitutional tax limit for SCSDs.

Through a statewide referendum, the tax limit for SCSDs was repealed in 1985. The repeal of the tax limit for SCSDs revived the debate over whether to extend the budget vote to SCSD residents. The results of an historical analysis suggest there is no longer a solid rationale for separate budget voting provisions, and that the same budget voting mechanism should be used in all independent school districts.

REFERENCES

Boeddener v. State of New York and City School District of the City of Glen Cove. (1989). Memorandum of Law in Support of Motion to Dismiss. Clement J. Colucci, Assistant New York State Attorney General. United States District Court, Eastern District of New York, CV 89-3420 (ERK).

Burke, Arvid J. (1978). "Development of Public School Finance in New York State," New York State School Finance Law Study Project (Occasional Paper No. 14). Albany.

Clements, John. (1989). New York Facts. Clements Research II, Inc. Dallas Texas.

Fairbanks, Mary Jo. (1989). A Guide to New York State Government. The League of Women Voters of New York State. New York, New York.

Frey, Thomas R. (1978). Report of the Special Task Force on the Financing of City School Districts. Albany, New York.

Kissinger, Martha. (1987). Letter to Regent Louise P. Matteoni. Re: Small City School Districts - School Budget Approval Process, New York State Small City School District Association. Albany, New York.

Mort, Paul R. (1951a). Public School Finance (rev. ed.). New York: McGraw-Hill.

Mort, Paul R. (1951b, July). "Voter Control vs. Board Control of School Budgets." The School Executive, 34-37.

New York State Assembly Ways and Means Committee. (1987, November). "A Report on the Small City School Districts - A Chronology of Reform." The Ways and Means Report. Albany.

New York State Consolidated Law Service. (1990). Constitution of the State of New York. Rochester, New York: Lawyers Cooperative Publishing.

New York State Legislative Commission on Expenditure Review {LCER}. (1978, December). School District Budget Voting and Contingency Budgeting (Program Audit No. 9.1.78). Albany.

New York State Office of the Comptroller. (1949). Second Report of the State Comptroller's Committee on Constitutional Tax Debt Limitations and City - School Fiscal Relations. Albany.

New York State Office of the Governor. (1950). Bill Jacket, Chapter 762, Laws of 1950, Albany, 1-28.

New York State Senate Research Service. (1988a, April) "The Hurd Dilemma - The Origins, Responses, and Status of an Old Problem," Issues and Focus (Report No. 88-143). Albany.

New York State Senate Research Service. (1988b, May). "School Budget Controversies - Small City Vote and Contingency Budget Reform," Issues and Focus (Report No. 88-173). Albany.

Stavisky, Leonard P. (1985). "Educational Policy Making in New York State." In Peter W. Colby (Ed.), New York State Today. Albany, New York: State University of New York at Albany Press.

The Nelson A. Rockefeller Institute of Government. (1986). 1986 New York State School District Gazetteer. Albany.

The Nelson A. Rockefeller Institute of Government. (1988). Governing the Empire State: An Insider's Guide, Management Resources Project. Albany.

Venter, Bruce M. (1986). Distribution of Special Aid to Small City School Districts in New York State, 1983-1984 (Doctoral dissertation, State University of New York at Albany).